



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 12, 1996

Mr. Larry Schenk
City Attorney
City of Longview
P. O. Box 1952
Longview, Texas 75606-1952

OR96-1124

Dear Mr. Schenk:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40193.

The City of Longview (the "city") received two requests for a tape recording or transcripts of dispatch tapes concerning an incident involving Sheriff Bobby Weaver, on April 5, 1996. You inform us that "portions of the requested audio tape contain evidentiary material which will be used in the subsequent criminal prosecution arising directly out of the episode recorded on the tape."¹ You assert that the requested recording is excepted from required public disclosure based on section 552.108 of the Government Code.

Section 552.108 of the Government Code, sometimes referred to as the "law enforcement" exception, provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to

¹In support of this assertion, you have provided to this office a letter from the criminal district attorney.

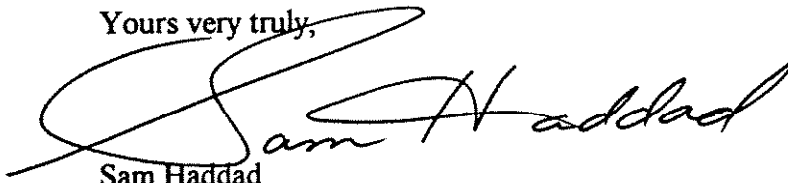
law enforcement or prosecution is excepted from [required public disclosure].

As you inform us that the recording may possibly be used as evidence in a criminal case concerning the charges against Sheriff Weaver, we conclude that the department may withhold the requested recording from required public disclosure pursuant to section 552.108 of the Government Code. See *Holmes v. Morales*, 39 Tex. Sup. J. 781, 1996 WL 325601 (June 14, 1996).

We note, however, that information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. We note also that since section 552.108 is discretionary with the governmental entity asserting the exception, you may choose to release all or part of the other information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a horizontal line.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 40193

Enclosure: Submitted information

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

cc: Mr. Jerry Graham
Longview News Journal
P. O. Box 1792
Longview, Texas 75606

Mr. Mitchell Borges
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Longview, Texas 75601
(w/o enclosure)